उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(34)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Criminal Appeal.No.1008 OF 2004
[Single Bench; Hon'ble Mr. Justice Dhirendra Mishra]

APPELLANT — Krishna Das, son of Firtu Das Mahant, Aged about 21 years, resident of Khamhar, Police Chowki-Robi, Police Station-Kharsiya, Distt. Raigarh (Chhattisgarh)

Vs

RESPONDENT — State of Chhattisgarh, Through: the Police Station- Baradwar, Distt. Janjgir-Champa (C.G.)

11.10.2007

Shri R.K. Jaiswal, Counsel for the appellant.

Shri Arun Sao, G.A. for the respondent/State.

This appeal is directed against the judgment of conviction and order of sentence dated 19.10.2004 passed in Session Trial No.319/04, whereby the learned Additional Sessions Judge, Sakti has convicted the appellant under Sections 394 read with Section 397/34 of the IPC and sentenced him to undergo R.I. for 7 years and to pay a fine of Rs.500/-, in default of payment of fine to undergo additional R.I. for one month.

The case of the prosecution in brief is that on 9.5.2004 in between 19:15 to 20:15 hrs, the appellant along with other co-accused

GRPRJ — FS/246— 2/2007 — 50,000.

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

entered the shop of complainant Sandeep Jain & Sanjay Jain on the pretext of purchasing ornaments. While complainant Sandeep Jain was showing ornaments to the appellant, at that time the appellant robbed golden polish necklace and tops valuing Rs.2,000/- on the threat of pistol and started running away. His associate was ready with the motorcycle in front of the shop and while they were attempting to flee from the place of incident, the complainant and Sanjay Jain chased and caught them. The appellant also assaulted the complainant and caused him hurt. However, the accused was nabbed and in this process, the accused also sustained some injuries. However, his accomplice Sohan managed to flee.

Report of the incident was lodged by complainant Sandeep Jain vide Ex.P-1 at 21.00 hrs on the same date. During investigation the appellant was arrested on the same day vide Ex.P-5. Motor cycle, necklace & tops with golden polish, air pistol etc. were taken into possession vide Ex.P-6 from the place of incident. A knife was taken into possession from the appellant vide Ex.P-7. Complainant Sandeep Jain was sent for medical examination to Primary Health Centre, Baradwar, where Dr. P. Singh (PW-7) examined him and gave his report of Ex.P-9. Sanjay Jain (PW-9) was also sent for medical examination and his examination report is Ex.P-11.

GRPRJ — FS/246— 2/2007 — 50,000.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(36)

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

After completing investigating, the charge sheet was filed against the appellant in the court of Additional Chief Judicial Magistrate, Sakti. During trial, the prosecution examined 12 witnesses and thereafter, the statement of accused was recorded under Section 313 of Cr.P.C. wherein the appellant pleaded innocence and false implication. He also examined Dr. [Smt.] Latlita Rajnala in his defence. However, the trial court after hearing the learned counsel for the respective parties, convicted and sentenced the appellant, as mentioned herein above.

Learned counsel for the appellant submits that there are material omissions in the statement of the complainant and Sanjay Kedia (PW-4) with respect to the seizure of knife from the appellant. The prosecution has shown that the seizure has been effected from the possession of appellant, whereas, these witnesses have stated that the same was recovered from the place of incident. There is also discrepancy with regard to the injuries sustained by Sandeep Jain, as the complainant says that he sustained injuries by hard & blunt object, whereas, the doctor has opined that the injuries sustained by the complainant was caused by the knife. The pistol recovered from the appellant is a toy pistol and the investigating officer has categorically stated that the complainant in his diary statement did

देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

37

आदेश पत्रक

मामला क्रमांक CRA 1008/07 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

not mention that he was assaulted by the knife. In these circumstances, benefit of doubt ought to have been extended to the appellant.

On the other hand, learned counsel for the State has supported the impugned judgment.

I have heard learned counsel for the parties. I have perused the impugned judgment as also the evidence available on record.

Complainant-Sandeep Jain (PW-1) in his deposition has stated that he along with his brother Sanjay Jain (PW-9) was sitting in their jewellery shop on the date and time of incident when the appellant came their shop on the pretext of purchasing the ornaments and remained there for an hour and in the meanwhile one of his associates was moving here and there. All of sudden the appellant picked up the ornaments, took out a gun from his pocket and asked him to handover the ornaments, at that time his brother Sanjay attacked the accused, as a result of which accused got frightened and started running out from the shop, however, he was overpowered by his brother. His associate has also started the motor cycle and tried to flee from there. He has further stated that the appellant assaulted him by some hard object on his left hand as a result of which he sustained injury and blood started oozing. On hearing his shouts, Ranu Ghosh,

लिखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(38)

आदेश पत्रक

मामला क्रमांक Cr.D. 1008/04 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

-5-

Sunil Kalani and several other persons rushed and caught the appellant and thereafter the report was lodged.

Similar is the statement of Sanjay Jain (PW-9), who has corroborated the statement of complainant in material particulars. Their version is further corroborated from the statement of Sanjay Agarwal (PW-2), who reached to the spot immediately after the incident and saw the accused lying in the drain at the place of incident. This witness has stated that Sanjay & Sandeep had sustained injuries, their injuries were bleeding and motor cycle & gun were lying at the place of incident.

Sanjay Kedia (PW-4) has proved the seizure of knife from the appellant and seizure of articles lying on the place of incident.

The discrepancies and omissions pointed out by learned counsel for the appellant in the statement of these witnesses are trivial in nature and the same does not impeach the credibility of above witnesses, who are the eye-witnesses of the incident and who have sustained injuries and their injuries have also been established by Dr. P. Singh, who has examined Sanjay Jain & Sandeep Jain and found corresponding injuries over their persons.

Thus, from the evidence available on record, the robbery of ornaments from the shop of complainant Sandeep Jain and in the

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XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

39

आदेश पत्रक

मामला क्रमांक Cr A. 1008/04 सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

—6—

process of robbery the appellant caused hurt to complainant Sandeep Jain and witness Sanjay Jain is established.

On the basis of aforesaid discussion, this Court is of the considered opinion that the trial court has not committed any illegality or irregularity in convicting the appellant under Section 394/397 read with Section 34 of the IPC and looking to the manner in which the attempt was made by the appellant in committing the robbery, the sentence imposed upon him by the trial court also cannot be termed to be excessive.

In the result, the appeal being devoid of substance is liable to be dismissed and it is hereby dismissed.

Sd/-
Dhirendra Mishra
Judge

[पीछे देखिये